

## **REMARKS/ARGUMENTS**

### **Status of the Claims**

Claims 1-21 are currently pending in the application. No claims have been amended, added, or cancelled. Therefore, claims 1-21 are present for examination. Claims 1, 9, and 10 are independent claims.

Prior to entry of this amendment, the application included claims 1-21. A non-final office action mailed March 19, 2008, has rejected claims 1-21 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2005/0172306 A1 to Agarwal et al. ("Agarwal"), and further in view of U.S. Patent Publication No. 2003/0229677 A1 to Allan ("Allan").

### **35 U.S.C. §103 Rejection, Agarwal and further in view of Allan**

Claims 1-21 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Agarwal and further in view of Allan. Applicants respectfully request reconsideration of the rejection because the Examiner has failed to show a *prima facie* case of obviousness. The combination of Agarwal and Allan is improper. One of the references used, namely Agarwal, is not prior art under any section of 35 U.S.C. § 102.

Indeed, to form an obviousness rejection under 35 U.S.C. § 103, each reference used in the rejection must be prior art under one or more sections of 35 U.S.C. § 102. See MPEP § 2141.01. Thus, if any reference used in the obviousness rejection is not prior art under 35 U.S.C. § 102, the Examiner has failed to state a *prima facie* case for the obviousness rejection.

The present application claims benefit of the filing date from two provisional applications: U.S. Provisional Application No. 60/437,441 and U.S. Provisional Application No. 60/437,443. Both of these provisional applications have a filing date of January 2, 2003. Thus, the priority date for the present application is January 2, 2003.

The filing date for Agarwal is October 20, 2003. Thus, the filing date for Agarwal is a full 10 months after the priority date of the present application. As such, Agarwal

cannot be considered prior art to the present application under any section of 35 U.S.C. § 102. The use of Agarwal in this obviousness rejection is improper. Applicants respectfully request that the Examiner withdraw this rejection and issue a notice of allowance.

**CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. Applicants do not acquiesce to any argument not specifically addressed herein. Rather, Applicants believe the amendments and arguments contained herein overcome all rejections presented.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,



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